

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 439**

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**Introduced by Senators Steinberg and Leno**

February 21, 2013

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An act to amend Section 11362.765 of the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

SB 439, as amended, Steinberg. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, provides that a patient or a patient's primary caregiver who possesses or cultivates marijuana for personal medical purposes of the patient upon the written or oral recommendation or approval of a physician is not subject to conviction for offenses relating to possession and cultivation of marijuana.

Existing law also makes it a crime to possess for sale, plant, cultivate, harvest, dry process, transport, import into this state, sell, furnish, administer, or give away, to offer to transport, import into this state, sell, furnish, administer, or give away, or to attempt to import into this state or transport, any marijuana. Existing law makes it a felony or misdemeanor to open or maintain any place for the purpose of unlawfully selling, giving away, or using, or to knowingly rent, lease, or make available for use a building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution. Existing law further provides that every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, and every building or place wherein or upon which

those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered.

Existing law requires the Attorney General to develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996, and the Attorney General has published guidelines regarding collectives and cooperatives organized and operated to cultivate and distribute marijuana for medical purposes.

This bill would exempt from the criminal acts and abatement of nuisance provisions described above collectives, and cooperatives, as defined. The bill would also exempt those entities and persons from criminal prosecution or punishment solely on the basis of the fact that they receive compensation for actual expenses incurred in carrying out activities that are in compliance with those guidelines.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 11362.765 of the Health and Safety Code  
2 is amended to read:

3 11362.765. (a) Subject to the requirements of this article, the  
4 individuals specified in subdivision (b) shall not be subject, on  
5 that sole basis, to criminal liability under Section 11357, 11358,  
6 11359, 11360, 11366, or 11366.5, or *liability as a nuisance under*  
7 *Section 11570*. However, nothing in this section shall authorize  
8 the individual to smoke or otherwise consume marijuana unless  
9 otherwise authorized by this article, nor shall anything in this  
10 section authorize any individual or group to cultivate or distribute  
11 marijuana for profit.

12 (b) Subdivision (a) shall apply to all of the following:

13 (1) A qualified patient or a person with an identification card  
14 who transports or processes marijuana for his or her own personal  
15 medical use.

16 (2) A designated primary caregiver who transports, processes,  
17 administers, delivers, or gives away marijuana for medical  
18 purposes, in amounts not exceeding those established in subdivision  
19 (a) of Section 11362.77, only to the qualified patient of the primary  
20 caregiver, or to the person with an identification card who has  
21 designated the individual as a primary caregiver.

1 (3) Any individual who provides assistance to a qualified patient  
2 or a person with an identification card, or his or her designated  
3 primary caregiver, in administering medical marijuana to the  
4 qualified patient or person or acquiring the skills necessary to  
5 cultivate or administer marijuana for medical purposes to the  
6 qualified patient or person.

7 (4) Collectives and cooperatives.

8 (c) Collectives and cooperatives that receive compensation for  
9 actual expenses incurred in carrying out activities that are in  
10 compliance with the guidelines referenced in subdivision (e),  
11 including reasonable compensation incurred for services provided  
12 to the members or the organization, shall not be subject to  
13 prosecution or punishment under Section 11359 or 11360 solely  
14 on the basis of the fact that those entities or persons receive  
15 compensation as described in this subdivision.

16 (d) A primary caregiver who receives compensation for actual  
17 expenses, including reasonable compensation incurred for services  
18 provided to an eligible qualified patient or person with an  
19 identification card to enable that person to use marijuana under  
20 this article, or for payment for out-of-pocket expenses incurred in  
21 providing those services, or both, shall not, on the sole basis of  
22 that fact, be subject to prosecution or punishment under Section  
23 11359 or 11360.

24 (e) For purposes of this section, both of the following apply:

25 (1) “Collectives and cooperatives” means a collective or  
26 cooperative that operates within the terms of the Compassionate  
27 Use Act of 1996 (Section 11362.5) and this article and that is  
28 organized and operated in compliance with paragraphs A and B  
29 of Section IV of the Guidelines for the Security and Non-Diversion  
30 of Marijuana Grown for Medical Use, issued by the Attorney  
31 General in August 2008, pursuant to Section 11362.81. For  
32 purposes of this section, “collectives and cooperatives” includes  
33 the officers, members, and employees of the collectives and  
34 cooperatives.

35 (2) A collective may be organized as any statutory business  
36 entity permitted under California law.

37 (f) *Consistent with Section 11362.83, this section shall not*  
38 *prevent a local government from adopting or enforcing local*  
39 *ordinances that regulate the location, operation, or establishment*  
40 *of a medical marijuana collective or cooperative.*

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